

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

August 16, 2002 Session

BRENDA BARTON v. ANVIL INTERNATIONAL, INC., ET AL.

**Direct Appeal from the Chancery Court for Chester County
No. 9654 Joe C. Morris, Chancellor**

No. W2001-02523-WC-R3-CV - Mailed November 5, 2002; Filed December 11, 2002

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employer insists (1) the trial court erred in considering an examining physician's opinion as not being based on statutory guidelines and (2) the award of permanent partial disability benefits based on 50 percent to one arm and 45 percent to the other arm is excessive.¹ As discussed below, the panel has concluded the judgment should be affirmed.

**Tenn. Code Ann. § 50-6-225(e) (2001 Supp.) Appeal as of Right; Judgment of the
Chancery Court Affirmed**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and MICHAEL MALOAN, SP. J., joined.

Jeffery G. Foster, Jackson, Tennessee, for the appellant, Anvil International, Inc.

Scott G. Kirk, Jackson, Tennessee, for the appellee, Brenda Barton

MEMORANDUM OPINION

The employee or claimant, Ms. Barton, initiated this civil action to recover workers' compensation disability benefits for a work-related injury. The employer, Anvil International, denied liability for permanent disability. After a trial on the merits, the trial court awarded, among other things, benefits based on permanent partial disability to both arms. The employer has appealed.

¹ An injury to both arms is a scheduled injury and the better practice is to average the awards to each arm for a single award based on a percentage of both arms. Scales v. City of Oak Ridge, 53 S.W.3d 649 at n. 1 (Tenn. 2001). The issue deemed waived since it was not raised in this appeal.

For injuries occurring on or after July 1, 1985, appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2001 Supp.). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. 1995). The standard governing appellate review of findings of fact by a trial court requires the Special Workers' Compensation Appeals Panel to examine in depth a trial court's factual findings and conclusions. GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. 2001). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 177 (Tenn. 1999). The trial court's findings with respect to credibility and weight of the evidence may generally be inferred from the manner in which the court resolves conflicts in the testimony and decides the case. Tobitt v. Bridgestone/Firestone, Inc., 59 S.W.3d 57, 61 (Tenn. 2001). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998). The extent of an injured worker's vocational disability is a question of fact. Seals v. England/Corsair Upholstery Mfg., 984 S.W.2d 912, 915 (Tenn. 1999). Where the medical testimony in a workers' compensation case is presented by deposition, the reviewing court may make an independent assessment of the medical proof to determine where the preponderance of the proof lies. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002).

The claimant is 53 years old with a ninth grade education and experience in production work. She worked as a "bagger" for the employer for more than a year before she began experiencing numbness in both hands and arms. An orthopedic surgeon diagnosed bilateral carpal tunnel syndrome and mild tendinitis in her right elbow. When conservative care failed to relieve the symptoms, the doctor performed corrective surgery on both arms and prescribed physical therapy. The surgeon opined the claimant reached maximum medical improvement on January 15, 2001 and would retain permanent medical impairments of 3 percent to the right upper extremity and 5 percent to the left upper extremity. There is no evidence the injury involved any member other than the two arms. The claimant returned to work and continued to work off and on until approximately three weeks before the trial date, when she quit because of continuing pain in her hands and wrists.

Dr. Joseph Boals examined the claimant and estimated her permanent impairment to be 20 percent to each upper extremity. He testified by deposition that the opinion was based on the latest edition of the AMA Guides. The appellant contends Dr. Boals used the wrong chart in the guidelines. AMA Guides provide guidance for the use of physicians to assist them in evaluating the extent of an injured worker's medical impairment. It is not a legal treatise. Interpretation of medical documents is best left to medical experts, including Dr. Boals. The record reflects that Dr. Boals is eminently qualified to do so. Moreover, there is no reason for us to suspect the award would have been materially less if the trial court had not considered the opinion of Dr. Boals, for permanent disability benefits are recoverable under the Workers' Compensation Law whether or not there is a

medical impairment rating. Hill v. Royal Ins. Co., 937 S.W.2d 873 (Tenn. 1996). The first issue is accordingly resolved in favor of the appellee.

The employer contends the trial court's award of permanent disability benefits is excessive because of the low impairment rating provided by the operating surgeon, the fact she was able to return to work following surgery and because she has some transferable skills. The fact of employment after injury is a factor to be considered in determining the extent of an injured worker's disability, but that fact is to be weighed in light of all other considerations, including the employee's skills and training, education, age, local job opportunities, capacity to work at the kinds of employment in his or her disabled condition, rating of anatomic disability by a medical expert and the employee's own assessment of his or her physical condition and resulting disability. Cleek v. Wal-Mart Stores, Inc., 19 S.W.3d 770, 774 (Tenn. 2000). Additionally, the extent of an injured worker's disability is an issue of fact. Walker v. Saturn Corp., 986 S.W.2d 204, 207 (Tenn. 1998). Giving due deference to the finding of the trial court, we cannot say the evidence preponderates against the trial court's finding with respect to the extent of the claimant's vocational disability.

For those reasons, the judgment of the trial court is affirmed. Costs are taxed to the appellant.

JOE C. LOSER, JR.

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
August 16, 2002

BRENDA BARTON v. ANVIL INTERNATIONAL, INC., et al.

**Chancery Court for Chester County
No. 9654**

No. W2001-02523-WC-R3-CV - Filed December 11, 2002

JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the Appellant, Anvil International, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM